

**Applicant:** Robert Ray Mhoon

**Agent:** Rick Bennett

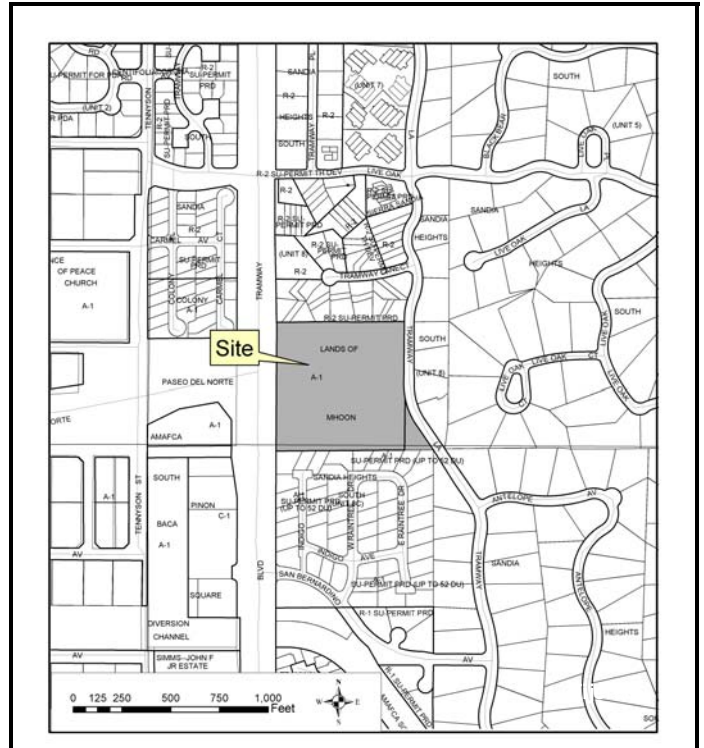
**Location:** 900 Tramway Lane NE

**Property Size:** Approximately 10.31 acre

**Existing Zone:** A-1/R-1

**Proposed Request:** R-2

**Recommendation:** Denial



**Summary:** The applicant is requesting a zone change from A-1 and R-1 to R-2 to be consistent with surrounding zoning. The site is vacant and adjacent to residential development.

This case was deferred from the July 2, 2007 hearing to give the applicant additional time to submit a site plan. To date, staff has not received a site plan.

**Staff Planner:** Mari Simbaña, Program Planner

- Attachments:**
1. Application
  2. Land Use and Zoning Map
  3. Additional Materials from Applicant (received 11/28/06)
  4. Additional Letters of Opposition from Neighbors (received by 2/21/07)
  5. Letter of Opposition from Neighbors (received by 12/15/06)
  6. Request from Applicant for Deferral of March 7, 2007 hearing (received 2/26/07)
  7. Letter to Applicant from Sandia Heights Homeowners Assoc. (received 3/16/07)
  8. Request from Applicant for Deferral of July, 2007 hearing (received 6/22/07)

Bernalillo County Departments and other interested agencies reviewed this application from November 20, 2006 to June 11, 2007.

Agency comments were used verbatim in preparation of this report, and begin on page 9.

**AGENDA ITEM NO.: 5**  
**County Planning Commission**  
**July 2, 2008**

CZ-70001 Rick Bennett, agent for Robert Mhoon, requests approval of a zone map amendment from A-1 to R-2 on Tract 5, SP-79-69, Lands of Mhoon, located at 900 Tramway NE, located on the east side of Tramway between Live Oak Road and San Bernardino Avenue, containing approximately 10.31 acres. (C-23) (DEFERRED FROM THE JULY 11, 2007 HEARING)

**AREA CHARACTERISTICS AND ZONING HISTORY**  
**Surrounding Zoning & Land Uses**

<b>Site</b>	<b>Zoning</b>	<b>Land Use</b>
	A-1 and R-1	Vacant
<b>North</b>	R-2	Special Use Permit for Planned Residential Development
<b>South</b>	A-1	Special Use Permit for Planned Residential Development, 52 Units
<b>East</b>	Right -of-Way A-1	Tramway Lane Residential
<b>West</b>	Right-of-Way	Tramway Boulevard

## **BACKGROUND:**

### **The Request**

The applicant is requesting a zone change from A-1/R-1 to R-2 for a property in Sandia Heights that fronts Tramway Blvd. This subject property is vacant and two arroyos run through it. There is currently a building and storage shed on the property. According to submitted materials, the applicant, "...wishes to rezone his property to R-2 for the development of multi-purpose housing."

A previous application for a Special Use Permit for a Planned Development Area (CSU-27) was made for this site in 2000. After confronting strong opposition from neighbors the owner requested a withdrawal of the application. The Extraterritorial Land Use Commission accepted the withdrawal at the November 1, 2000 public hearing.

### **Request Justification**

The applicant believes that the requested zoning is consistent with the surrounding properties which are zoned R-2 and have R-2 uses and that, "...changed neighborhood and community conditions justify the land use change."

### **Surrounding Land Use and Zoning**

North of the subject site is a development zoned R-2 with a SUP for Planned Residential Development (CSU-77-44). North of this are various developments also zoned R-2 with Special Use Permits for Planned Residential Development (CSU-78-16, CSU-78-94, CSU-78-8) and Special Use Permits for Townhomes (CSU-79-4, CSU-79-3). To the south of the subject site is a development zoned A-2 with a Special Use Permit for 52 lots (CSU-90-3). The smallest lot within this development is 0.1610 acre and the largest is 0.409 acre. These are consistent with the Sandia Heights Master Plan. R-1 zoned, properties containing single-family dwellings are located east of the subject site, beyond Tramway Lane.

## **APPLICABLE PLANS AND POLICIES:**

### **Albuquerque/Bernalillo County Comprehensive Plan**

The site is located in the Semi-Urban Area as delineated in the Albuquerque/Bernalillo County Comprehensive Plan. The principal goal for this area is to "maintain the character and identity of semi-urban areas which have environmental, social or cultural conditions limiting urban land uses."

Policy a (Semi-Urban Area) states "Development in the Semi-Urban area shown by a Plan map shall be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; overall gross density shall be up to 3 dwelling units per acre."

### **Sandia Heights Master Plan**

An amendment to the Master Plan (SC5-70-28MP), passed by the Board of County Commissioners in November 1976, determined the following:

- The areas proposed for R-2 and C-1 zoning would be controlled through the provisions of a Special Use Permit.
- All subsequent requests for re-zoning with the exception of single-family zoning will be under the provision of a Special Use Permit.
- In accordance with these provisions, development cannot occur until a detailed development plan is prepared, submitted, and approved by the County Planning Commission and the Bernalillo County Commission.
- As a condition of approval, the County may impose any reasonable requirement it deems appropriate.
- This includes requirements for the dedication of needed streets, access, drainageways, landscaping.
- The density for the total Master Plan Area (shall) not exceed 3 dwelling units per gross acre and that in no case will the density exceed 10 dwelling units per net acre for any parcel within the R-2 zoned area and that the building height not exceed the height limitations of the County R-1 zone.
- Other findings (1976 staff report) determined neighborhood park land dedication and right-of-way dedication.

### **Bernalillo County Zoning Ordinance**

**Resolution 116-86** defines criteria for evaluating a Zone Map changes and Special Use Permit applications.

The following policies for deciding zone map changes and Special Use Permit applications pursuant to the adopted Bernalillo County Zoning Ordinance.

- A. A proposed land use change must be found to be consistent with the health, safety and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan of other Master Plans and amendments thereto including privately developed area plans which have been adopted by the Board of County Commissioners.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  - 1. An error in the original zone map.
  - 2. Changed neighborhood conditions, which justifies a change in land use or

3. That a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the Board of County Commissioners.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- H. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- I. A zone change request, which would give a zone different from the surrounding zoning to a strip of land along a street, is generally called a "strip zoning." Such a change of zone may be approved only when:
1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

### **Section 19: Landscaping and Buffer Landscaping Regulations:**

Where a nonresidential zone which is hereafter developed for a business purpose abuts a residentially zoned property, special buffer landscaping is required to minimize noise, lighting and sight impact of the nonresidential activities in the residential area.

- A. Landscaping and buffer landscaping will be required in all zones for office, commercial, industrial, and multifamily residential uses; R-1, A-1, A-2 and M-H residential uses are exempt.
1. Sites of one acre or less:

- a. There shall be a landscaped setback along all streets of no less than ten feet.
  - b. There shall be a landscaped buffer of six feet between single-family residential uses and office, commercial, industrial, and multifamily residential uses.
  - c. Fifteen percent of all paved areas shall be landscaped. The landscaped setback shall contribute toward this requirement.
2. Sites one acre and up to five acres. There shall be a landscaped setback along all streets of no less than 15 feet. All other requirements same as 1.b. and 1.c. above.
- B. In a nonresidential zone, a solid wall or a solid fence at least six feet high shall be erected on sides abutting a single family residential use, except for those sides abutting public right-of-way.
- E. Landscaping which dies shall be replaced by the property owner who is obligated to provide it as expeditiously as possible, but in no case longer than 30 days after notification. If the 30-day period falls at a time of the year when planting of landscaping is inadvisable, a waiver may be granted by the Zoning Administrator to allow planting at the earliest possible time. The waiver and date of the planting deadline shall be recorded by the County Zoning Office.
- G. Parking spaces within a parking lot shall be no more than 50 feet from a tree.
- H. Nonconforming Landscaping. Premises which, when they were developed, were not required to be developed in accordance with the Landscaping and Buffer Landscaping Regulations Section of this ordinance, shall be made to conform with this regulation within two years due to the amendment of the map or text of this ordinance.

#### **ANALYSIS:**

##### **Surrounding Land Use and Zoning**

The subject site is surrounded by R-2 and A-2 zoning with Special Use Permits for Planned Residential Developments. R-1 zoned properties are located east of the subject site, beyond Tramway Lane.

##### **Plans**

*Albuquerque/Bernalillo County Comprehensive Plan* Policy a.2. states, "Development within the Semi-Urban area shown by a Plan map shall be consistent with development limitations imposed by," physical and cultural conditions and that a possible technique in achieving this is to "Develop and adopt area and sector development plans to protect local resources and community values."

The *Sandia Heights Master Plan* shows the subject site zoned A-1. In terms of density in the Master Plan area, "requests for re-zoning with the exception of single-family zoning will be under the provision of a Special Use Permit."

### **Zoning Ordinance**

Resolution 116-86 requires that a land use change must clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan.

### **Agency Comments**

Bernalillo County Environmental Health staff has stated that the applicant must submit a water and sewer availability statement.

Although a grading and drainage plan is not required with the request for a zone change, Public Works Division will require it of the entire site prior to any development. Additionally, a portion of this property appears to be within a designated 100-year floodplain as shown on the National Flood Insurance Program's Flood Insurance Rate Map (FIRM). A grading and drainage plan will address these issues.

A traffic study may be required and this will depend on the number of units that will be developed on the site.

### **Analysis Summary**

<b>Zoning</b>	
Resolution 116-86	A zone change from A-1 to R-2 is inappropriate given that all the uses allowed under the desired zoning would not be compatible with the surrounding community.
<b>Plans</b>	
Comprehensive Plan	Request is not consistent with development limitations set by Area Plan.
Area Plan	Requires request for re-zoning should be under the provisions of a Special Use Permit.
<b>Other Requirements</b>	
Environmental Health	Applicant must provide water and sewer availability statement.

### **Conclusion**

The request is inconsistent with the *Albuquerque/Bernalillo County Comprehensive Plan* in that straight R-2 zoning does not maintain the character and identity of the area. Furthermore, the subject site is zoned A-1 and R-1 and shown as thus on the Sandia Heights Master Plan map. According to the Master Plan provisions, requests for Zone Changes should be associated with Special Use Permits that limit density. Therefore, staff deems the request for a Zone Change to R-2 is inappropriate for the site.

### **Additional Comments, March 7, 2007:**

Following the last hearing, many more letters of opposition were sent by neighbors. To date, the applicant has not submitted any new materials, therefore, staff recommends denial.

### **Additional Comments, July 11, 2007:**

To date, applicant nor agent have submitted a site plan.

**Additional Comments, July 11, 2007:**

To date, neither the applicant nor agent has submitted a site plan or additional materials.

**RECOMMENDATION:**

Staff recommends Denial, based on the following Findings.

Mari Simbaña  
Program Planner

**FINDINGS:**

1. This is a request for a zone map amendment from A-1 and R-1 to R-2 on Tract 5, SP-79-69, Lands of Mhoon, located at 900 Tramway NE, located on the east side of Tramway between Live Oak Road and San Bernardino Avenue, containing approximately 10.31 acres.
2. The property is within the Semi-Urban Area as designated by the Albuquerque/Bernalillo County Comprehensive Plan.
3. This request is inconsistent with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.
4. The surrounding properties have developed as residential uses pursuant to Special Use Permits for Planned Residential Development.



## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

### **Zoning Administrator**

11/28/06

The R-2 zone mirrors R-1 for permissive and conditional uses, but does permit apartments, townhomes, and multiple single-family dwellings. Height, lot width, some setbacks, & parking requirements remain the same, while density (FAR of 0.5) may be increased if water & sewer are available, and usable open space standards may apply.

### **Environmental Health:**

6/18/07

No previous comments by applicant have been addressed.

12/8/06

Provide a water and sewer availability statement.

### **Zoning Department Manager:**

### **Building Department Manager:**

### **Fire:**

No comment received

### **Public Works:**

DRAN:

12/5/06

1. A grading and drainage plan is not required at this time as a condition of approval of this zone change request.

2. A grading and drainage plan, prepared by an engineer licensed in the State of New Mexico, approved by Bernalillo County Public Works Division is required of the entire site prior to any development.

3. A portion of this property appears to be within a designated 100-year floodplain as shown on the National Flood Insurance Program's Flood Insurance Rate Map (FIRM). Existing flow paths must enter and leave the property in historic conditions. Development around the floodplain will have to be addressed specifically by a grading and drainage plan.

4. This property is subject to the National Pollution Discharge Elimination System as required by the Bernalillo County Code Chapter 38 Section 147. A Storm Water Pollution Prevention Plan (SWPPP) is required prior to full development.

DRE:

No comment received

Parks & Recreation:

12/4/06

No adverse comment on the zone change.

For informational purposes:

There is a paved multi-purpose trail on the east side of Tramway adjacent to the subject property.

If grade allows, it is recommended to provide ped and bike access from development to the existing trail.

Sheriff's: No comment received

**COMMENTS FROM OTHER AGENCIES**

MRGCOG:

11/28/06

Tramway Bd is designated a limited access facility on the Long Range Roadway System Map. Full intersection access is provided at Alameda Bd / Cedar Hill Rd and San Bernadino Ave, and a T-intersection with median opening is provided at Paseo del Norte. Access to Tramway Bd is established by resolution of the Metropolitan Transportation Board.

Tramway Bd is also designated as having an off-street bicycle path / trail on the Long Range Bikeway System Map. Coordination with County Public Works is recommended to insure project conformity with these adopted policies of the Metropolitan Transportation Board.

AMAFCA:

12/7/06

No objection to requested action. AMAFCA has reviewed site plans for this property in the past and will review and approve future site plans for building permit.

City Planning Department:

No comment.

City Public Works:

Transp. Planning: No comment received

Transp. Development:

11/29/06 No adverse comments

Water Resources: No comment received

City Transit:

ABCWUA Utility Development Section:

N/A

City Environmental Health:  
No comment received

City Open Space:  
No comment received

NM Department of Transportation:  
11/27/06  
Possible Impacted NMDOT roadway(s): Tramway (NM 556)  
Departments Comments: No objections to the zone change. A traffic study maybe required as the development may have an impact on Tramway (in the vicinity of the development). The impact will depend on the number of units that will be developed on the site.

Albuquerque Public School:  
No comment received

Village of Tijeras:  
No comment received

Public Utility Company of New Mexico:  
12/6/06  
It is the applicant's obligation to determine and accommodate existing utility easements that cross the property, to dedicate utility easements, and to abide by any conditions or terms of such easements.

**NEIGHBORHOOD ASSOCIATIONS:**

Sandia Heights Neighborhood Association  
North Albuquerque Acres Community Association